D.B. CIVIL SPECIAL APPEAL (WRIT) NO.657/2000
Atma Ram Vs. State of Rajasthan & Ors.

Date : 03.1.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. S.L. Jain for the appellant.
Mr. L.R. Upadhyay, Dy. Government Advocate.

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Heard learned counsel for the parties.

This petition comes up for orders on application for grant of interim relief. However, considering the fact that the matter is pending for long and issue raised is short, learned counsel for the parties have requested that the appeal itself may be decided on merit.

The facts which are not in dispute are that the petitioner-appellant was regularly selected being BA/B.Ed. as Shiksha Sahyogi, to be appointed in Rajiv Gandhi Swarn Jayanti Pathshala situated at Chak 5-PPA. The petitioner-appellant is resident of Chak 5-PPB. In pursuance of the selection made on 1.5.1999, the petitioner joined at the

institution vide Annex.6 dated 1.7.1999.

Thereafter on a complaint lodged by one Balwant Singh, who was holding the qualification of only Higher Secondary, the appointment given to the appellant was cancelled vide order dated 2.7.1999 solely on the ground that since another person holding a graduate degree of the village 5 PPA is available, therefore, the appointment of petitioner-appellant is being cancelled.

We may notice here that so far as the complainant is concerned, he was not a graduate but was only a higher secondary as per the impugned order itself, who was the other graduate candidate had not come forward nor his name has been disclosed. The order was challenged by way of S.B. Civil Writ Petition No.2556/1999 inter alia on the ground that the termination order being violative of Article 15 and 16, as termination has been effected only on the ground of residence of the petitioner, it had resulted in depriving the petitioner equal opportunity of employment solely on the basis of residence.

The learned Single Judge disposed of the writ petition by referring to his judgement delivered in S.B. Civil Writ Petition No.2171/1999 – Mohan Lal Vs. State of Rajasthan and others. The order under appeal reads as under:-

> "The petition is disposed of in terms of the judgement delivered today in S.B.C. Writ Petition No.2171/99 Mohan Lal V. State of Rajasthan & others as the appointment of the petitioner was void."

This takes us to consider the decision rendered in Mohan Lal's case.

A perusal of Mohan Lal's case reveals that criteria of giving appointment to any person, who is resident of village concerned was found to be violative of Article 15 by learned Single Judge as a reservation in the employment solely on the basis of residence. The consequence ought to have been followed by setting aside the order passed by the Collector, Annex.1 and allowed the petitioner to continue in service. However, strangely, the

learned Single Judge issued a general direction:-

> "it is clarified that without taking such a decision, advertising the post and making proper selection, no appointment will be made. In case the appointments made earlier are challenged before this Court and the selectees are impleaded herein, their appointments are declared void being violative of Article 14 of the Constitution but where appointments have not been challenged, they may not be disturbed."

We are afraid whether any of the general direction could be issued by the learned Single Judge without examining facts of each case. In our opinion, those directions cannot be sustained and deserves to be ignored.

So far as the facts of the present case about the petitioner's appointment are concerned, the order was challenged inter alia on the ground of violation of Article 14 or his selection having been made without affording any opportunity to other persons. In fact the appointment has been made after due selection cannot be violated that the

selection suffered from violation of Article 16 and providing equal opportunity of employment to eligible candidates, who were desirous of seeking appointment. The appointment has been cancelled after having been made on due selection solely on the basis that the petitioner is not resident of village where the school was situated by applying the principle of Mohan Lal's case. This could not have been a ground of denying him continued employment at Chak 5 PPA because he is resident of Chak 5 PPB.

In the circumstances, the conclusion is irresistible that the termination of the petitioner's appointment which was offered to him after due selection, solely on the basis of resident of a different village cannot be sustained.

Consequently, the appeal is allowed. The judgement under appeal is set aside. The writ petition is allowed and termination order of the petitioner is quashed. The petitioner shall continue to remain in service. No order as to costs.

[ CHATRA RAM JAT ], J. [ RAJESH BALIA ], J.

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